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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26 TH DAY OF May 1998

BEFORE

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

HRRP No.765 of 1994

Between :

Smt.K.A.Kamalam,  
d/o.Sri.V.T.Gopala Menon,  
Osborne Road,  
Bangalore - 42. .. Petitioners.

(By Sri.M.L.Dayananda Kumar - Adv.)

And :

Sri.B.M.Umberkoman,  
s/o.late B.M.Madhavaraya Mudaliar,  
No.60, Second Floor,  
Osborne Road, Major,  
Bangalore - 560042. .. Respondents

(By Sri.K.Suman - Adv for R1 & 2,  
A.Nagaraj - for respdt.)

This CRP is filed under sec.50(1) of KRC Act against the order dtd.25.2.1993 passed in HRC.(E)FR.18/92 on the file of the Rent Controlloer, East Range, Bangalore fixing the fair rent of Rs.700/- per month. This HRRP coming on for hearing this day, the Court made the following:

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ORDER

Petitioner is a tenant in respect of II floor of premises bearing No.60, Osban Road, Bangalore which is a residential one. While he took the premises on lease, he agreed to pay a monthly rent of Rs.1,000/-. Subsequently he made an application before the House Rent and Accommodation Controller, Bangalore under Sec.14 for fixation of fair rent in respect of the said premises. This application was enquired into and the Rent Controller has fixed the fair rent @ rs.700/- with effect from March 1994. This order is under challenge in this revision.

Admittedly this portion of the building was an unauthorised construction and it is not yet assessed to Building Taxes, therefore no property tax assessments is available for guidance to fix the fair rent and admittedly this building was constructed after 1957. In such a situation, Proviso to Sec.14(6) of the Karnataka Rent Control Act (For short THE ACT) is applicable which provides guidance for fixing the fair rent. According to the said

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proviso, the Rent Controller first has to determine the cost of construction of the building and the market price of the land comprising the building and thereafter arrive at a figure calculated @ 6% p.a. <sup>of such cost</sup> and taking that as the basis and other ingredients, he has to fix the fair rent. In this case, the Rent Controller having given a finding that no Assessment Extract is available, proceeds to fix the fair rent at Rs.700/- only on the basis of the prevailing market rate. This order therefore is unsustainable as being not in accordance with the Proviso of Sec.14(6) of the ~~proviso~~ to the act.

For the reasons stated above, this revision petition is allowed. The order of the Rent and Accommodation Controller is set-aside and the matter is remitted to his file with a direction to hold an enquiry after permitting the parties to lead such additional evidence as they may choose in this <sup>check</sup> ~~petition~~ and fix the fair rent in accordance with Sec.14(6), proviso of the act. Petitioner/tenant till then shall continue to pay the contractual rent of Rs.1000/- per month to the landlord/respondent.

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Petition allowed.

Sd/-  
JUDGE

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